IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

WRIT PETITION NO. 117 OF 2007

Pfizer Employees Union . ...Petitioners
vs.
Bhartiya Kamgar Karmachari
Mahasangh and Ors. ...Respondents

C.U.Singh, Sr.Adv with K.S.Bapat i/by.S.S.Chaubal
for the petitioners.
L.G.Ghatkar for respondent no.1.
R.V.Paranjpe for respondent no.2.

CORAM: S.C. DHARMADHIKARI, J.

23rd January, 2007.

P.C :-

1. The petitioner union has challenged an order passed by the Learned President Industrial court rejecting its Transfer Application. The order under challenge was delivered on 11.12.2006 in Transfer Application (MRTU) No. 4 of 2006. The Transfer Application is preferred in main proceedings being Application (MRTU) No. 10 of 2006.

2. It is not necessary, to refer to the main matter and merits therein. Suffice it to state that in the main matter the jurisdiction of the Industrial court under Section 13 of the MRTU and PULP Act, 1971 is invoked for claiming a declaration that the recognition granted to the petitioner way back in 1989 is vitiated by fraud and misrepresentation and ought to be cancelled.

3. It appears that the petitioners have been recognised as a recognised union in the undertaking of respondent no.2. The first respondent is a rival union and it claims that it has the support of the majority and in any event the recognition of the petitioner deserves to be cancelled for the aforesaid reasons.

4. In the main matter, an application was made by the respondent no.1 for suspension of the petitioner’s right as a recognised union. Incidentally, it must be observed that the main matter is pending before the Industrial court at

Thane and presently assigned to the Learned Member, S.G. Kadam.

5. After narrating the events that took place during the hearing of the application referred to in para 4 above and more particularly the incident of 24.11.2006, the petitioner applied to the President, Industrial Court for transfer of the main proceedings by invoking his jurisdiction under the MRTU and PULP Act read with the Relevant regulations, enabling him to exercise Power of Transfer or Assignment of proceedings.

6. The Transfer application was heard by the Learned President after he invited the comments on the same from the Learned Member Industrial Court, Thane in whose court, the said matter is pending. Since the request was that the matter must be transferred from his court to another court the Learned President thought it fit to call for the comments of the concerned Presiding Officer. It also appears that the first respondent-original applicant by a reply denied the allegations against the Member of the

Industrial court, Thane.

7. Considering the nature of the allegations and the response thereto, the Learned President rejected the request for transfer. The reasons assigned by him are in paras 7 and 8 of the impugned order.

8. When this matter was placed before me for admission, Advocates appearing for both sides agreed that interest of justice would be subserved if the main matter is transferred from the court of Shri S.G.Kadam, Member, Industrial court, Thane to some other Industrial court at Thane. Both sides informed me that there are other members in the Industrial court at Thane who are available and who can deal with the main matter.

9. In the light of this agreement between the parties, it is not necessary to decide any larger controversy including the ambit and scope of the powers of Transfer of the Learned President. It is also not necessary to refer to the manner in which the application for transfer has been dealt with in

details. However, prima-facie, the same is not satisfactory.

10. In a number of decisions rendered on the ambit and scope of power of transfer of proceedings from one court to another, the Hon'ble Supreme court has held that it is not as if prejudice and damage must be proved. A reasonable apprehension that the party would not get a fair trial and justice is enough. In this context a useful reference can be made to the decisions of the Supreme Court reported in **AIR 1966 S.C. 1418 (V 53 C 276) Gurcharan Dass Chadha vs. State of Rajasthan and AIR 2000 S.C. page 2778 R.R. Balkrishnan Pillai V/s. State of Kerala** wherein the Supreme court observations are as under :

> "13. .....The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there

> is apprehension that justice will not be done in a given case does not suffice. The court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension.

. Similarly, in the decision of Supreme Court in AIR 2000 S.C. 2778 (supra) the Supreme Court has observed thus :

> "10. .....It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. Before transferring the case, the court has to find out whether the apprehension appears to be reasonable. To judge the reasonableness of the apprehension, the State of mind of the person who entertains the apprehension, is no doubt relevant but that is not all. The apprehension must appear to the court to be a reasonable, genuine and justifiable. In the present day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons. Dealing with the Transfer Petition, this court in Maneka Sanjay Gandhi vs. Rani Jethmalani (1979) 2 SCR 378; AIR 1979 SC 468; (1979) Cri.L.J. 458), observed (para 2)'-
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> "Assurance of a fair trial is the

> first imperative of the dispension of justice and the central criteria for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so the process of justice should not harass the parties and from the angle the court may weigh the circumstances. "

11. In the present case the Learned President does not dispute that the allegations are indeed serious. While exercising the powers of Transfer the Higher Courts do not accept allegations of bias and misdemeanour made casually and loosely by disgruntled and frustrated litigants and parties. However, when the allegation is that the Learned Presiding Officer made a demand for money in exchange of favourable

orders and some material is disclosed, then, depending upon the facts and circumstances in each case, it is expected that appropriate and corrective course of action is taken. The Learned President in this case has treated the matter as if it is an Adversarial Litigation. He has called upon the parties to the main matter to give their versions. This approach need not be straightaway faulted. However in the peculiar facts of this case, when it is only the petitioner who had made the grievance and when the matter was entirely between the petitioner and the concerned Presiding Officer, then it was not enough for the Learned President to call for versions from parties to the litigation. He has rightly called for the comments from the Learned Presiding Officer. However, in the present facts and circumstances, the Learned President ought to have been aware of the nature of the relief claimed and manner of dealing with the same in law. He was dealing with an application for transfer and not deciding any Departmental or Disciplinary proceeding against the Presiding Officer. This was not an occasion to give any clean chit to the Presiding

Officer. If the allegations were found to be baseless, mischievous and motivated then, the Learned President ought to have rejected the application. However, his reasoning does not proceed on these lines alone. He observes that the conduct of the Learned Presiding Officer does not appear to be probable and be-fitting Human Nature. Such a certificate was not at all necessary.

12. I have made these observations only to bring to the notice of the Learned President and other similarly placed judicial officers that application for transfers have to be dealt with strictly on the touchstone of principles laid down by the Supreme Court. It is not as if the powers of transfer are not available in law in other enactments. Section 24 and 25 of the Code of Civil Procedure so also Section 407 enumerate such powers. In some case even inherent powers are invoked. In the present case, the statute does not prescribe the manner in which the said power has to be exercised. However, the principles are by now well settled. A useful reference can be made to the decision of the Supreme

Court in the case reported in **AIR 1989 SC page 1433 Gujarat Electricity Board and anr. V/s. Atmaram Sungomal Poshani,** So also a decision of this court reported in **2000(3)Mh.L.J.page 198 H.S.T Hegde vs. Premier Autombiles Ltd.,Mumbai.**

13. In my view the Learned President has completely lost sight of these principles. There is one more disturbing feature and that is upholding the established norm that justice must not only be done but also seen to be done. This is not to be chanted like a mantra. Everybody seems to have overlooked the purpose for which the same is prescribed. Ordinarily, a open hearing and adjudication is not assured to an Aggrieved party. When in the court there is an open and public hearing of the cases, it should appear to the public that justice is being administered in accordance with law. This is not an empty formality or a ritual to be performed.

14. I would be failing in my duty if considering the allegations made on oath in the petition and the material produced, more particularly, the averments

at pages 5, 6 and 8 of this petition, the attention of this court's Administrative Wing is not invited to the same. The allegations are also made in the Transfer Petition and it is not as if they are made for the first time before this Court. They have been reiterated in oral arguments. It is high time that public confidence in the courts is maintained and is not shaken by such events. Such happenings and events may be rare but they need to be curbed and dealt with sternly in accordance with the norms of discipline. In a decision reported in **AIR 1994 SC page 1673 Ramchandra Ganpat Shinde and Anr. vs. State of Maharashtra and Ors.** K. Ramaswamy, J (as his lordship then was) has observed thus :-

> "12. Mr.Justice Arthur, J. Venderbilt in his "The Change of Law Reforms 1955" at pages 4 and 5, stated that:
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> > ".....it is the courts and not in the legislature that our citizens primarily feel the keen, the cutting edge of the law. If they have respect for the work of their courts, their respect for law will survive the short comings of every other branch of the Government; but if they lost their respect for the work of the Courts, their respect for the law and order will vanish with it to the great

detriment of society."

> 13. Respect for law is one of the cardinal principles an effective operation of the constitution, law and the popular government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication-be it judicial, quasi-judicial or administrative as hallmark, the faith of the people in the efficacy of judicial process would be disillusioned, if the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and higest responsibility of the court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the courts and take recourse to extra-constitutional remedies which is a death-knell to the rule of law.
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> 17.....Every endeavour would be made to inculcate respect for fair judicial process and faith of the people in the efficacy of law. "

14. In my view, considering the seriousness of the allegations and with a view to afford to the concerned Presiding Officer a fair opportunity, it would be desirable if this court on its administrative side takes a note of the same and

investigate them in a manner permissible in law. Needless to state that such investigation/inquiry if initiated be concluded on its own merits and in accordance with law uninfluenced by the decision of this court to transfer the proceedings from the court of Shri S.G.Kadam to some other court.

14. It is not as if I derive any pleasure in making the above observations. They are made with deep pain and anguish. However, it is in the interest of clean judicial administration as well as public interest that such complaints do not go unattended. I do not want to give an impression to the litigating public that such allegations being made on oath before the Highest Court in the state would make no difference to it. It is necessary that such matters are taken to their logical end and conclusion. That will ensure Independent and Impartial justice. It would not only curb the tendency of the litigating public to level false and baseless allegations against the Presiding Officer when they are at the receiving end but will ensure that the Presiding Officers do not ignore their

duties and obligations while upholding the Rule of Law and administration of justice. The parties who make such allegations on oath need to be made aware of the consequences in law, if they are unable to substantiate them. Presiding Officers and courts at the subordinate and lowest level are the foundation on which the Edifice and Structure guaranteeing Justice to common man is built. They are the one who are holding a ladder on which upper floors are constructed and Judges at Higher level are able to administer Justice. If this base and support is shaken, the Institutional Edifice would collapse. If investigations are conducted that will also give a fair opportunity to the concerned Judge to absolve himself.

15. It is in these circumstances that I am of the view that this court should take necessary action in this matter on its Administrative side. A copy of this order along with the Petition and the Annexures thereto be forwarded to the Registrar General of this court for initiating such action as he deems fit and proper. Petition is disposed off in above terms. It

is directed that the Learned President should assign Application (MRTU) No.10 of 2006 to a Industrial Court at Thane presided over by a member, other than Shri S.G. Kadam. The Learned President to pass appropriate orders assigning the application as above within a period of two weeks from the date of receipt of a copy of this order.

(S.C.DHARMADHIKARI, J)